

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
WESTERN DIVISION**

**ERSELL FRYAR, INDIVIDUALLY AND  
FOR AND ON BEHALF OF THE WRONGFUL  
DEATH BENEFICIARIES OF MARY ELLEN  
FRYAR**

**PLAINTIFFS**

**VERSUS**

**CIVIL ACTION NO. 3:04CV215-P-A**

**BEVERLY ENTERPRISES, INC.,  
BEVERLY ENTERPRISES-MISSISSIPPI, INC.  
d/b/a BEVERLY HEALTHCARE-RIPLEY,  
JAMES C. LANDERS, DAVID DEVEREAUX,  
JOHN SEAY and SHIRLEY MILLS**

**DEFENDANTS**

**ORDER**

This cause is before the Court on the plaintiff's Motion to Remand [15-1]. The Court, having reviewed the motion, the briefs, the authorities cited and being otherwise fully advised in the premises, finds as follows, to-wit:

Pursuant to the Fifth Circuit's decision in Gray v. Beverly Enterprises-Mississippi, Inc., 390 F.3d 400 (5<sup>th</sup> Cir. 2004), the motion to remand is well-taken and should be granted. Essentially, the Court in Gray held that, contrary to the defendants' argument for removal in this case, "it is at least reasonable to expect that a Mississippi court might find that the allegations of the in-state defendants' malfeasance and nonfeasance are sufficient to state a claim under state law." Id. at 410. Thus, pursuant to Travis v. Irby, 326 F.3d 644, 647 (5<sup>th</sup> Cir. 2003), the plaintiff has demonstrated that there is a reasonable basis for predicting that he will recover against the Mississippi administrator-defendants in state court. Accordingly, the defendants cannot meet their burden of proving improper

joinder.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the plaintiff's Motion to Remand [15-1] is well-taken and should be, and hereby is, GRANTED. IT IS FURTHER ORDERED that this cause is hereby remanded to the Circuit Court of Tippah County, Mississippi.

SO ORDERED, this the 19<sup>th</sup> day of July, 2006.

/s/ W. Allen Pepper, Jr. \_\_\_\_\_

W. ALLEN PEPPER, JR.

UNITED STATES DISTRICT JUDGE